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WILSON, SONSINI, GOODRICH & ROSATI			WEST, THOMAS C	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/612,375

**Applicant(s)**

EISEN, ORI

**Examiner**

THOMAS WEST

**Art Unit**

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 25, 2009 has been entered.
2. Claims 1-23 are currently pending and have been examined.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1-23 recite "time independent location" and "without regard to an amount of time associated with entering the keystrokes", "time independent location of a keystroke", and "predetermined value is not based on a previously stored keystroke sequence", which lacks support in the specification. Claim 1 recites, "is not based on", which is not a positive active method step and is also vague and indefinite.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 7, 8, 10, 11, 15, and 21 are rejected under U.S.C. 102(b) as being unpatentable over Kermani, U.S. Patent No. 6,895,514.

**Claim 1:**

Kermani, as shown, discloses the following limitations:

- providing instructions stored on a memory for assigning a score to a first of said keystrokes  $[[K1]]k_1$  (see at least column 5, lines 37-41);
- providing instructions stored on a memory for assigning a score to succeeding keystrokes after  $[[K1]]k_1$  based upon the time independent location of the keystroke in relation to another keystroke (see at least column 5, lines 62-67);
- providing instructions stored on a memory for summing at least three of the scores of the keystrokes in the string to obtain a string score (see at least column 4, lines 35-38);
- providing instructions stored on a memory for dividing the string score by the number of keystrokes used to determine the sum to obtain a normalized string score and (see at least column 4, lines 35-38);

- providing instructions stored on a memory for comparing the normalized string score to a predetermined value of normalized string scores to determine the likelihood that the keystroke entries are accurate, wherein the predetermined value is not based on a previously stored keystroke sequence. (see at least column 2, lines 29-32).

**Claim 2:**

Kermani, as shown, discloses the following limitations:

- the keystroke  $[[K2]]_{k_2}$  is immediately after the keystroke  $[[K1]]_{k_1}$  and each succeeding keystroke is provided with a score based upon its location from a preceding keystroke (see at least column 5, lines 62-67).

**Claim 3:**

Kermani, as shown, discloses the following limitations:

- each keystroke's score after  $k_1$  is based on its location in relation to the immediately preceding keystroke (see at least column 5, lines 62-67).

**Claim 7:**

Kermani, as shown, discloses the following limitations:

- further comprising making a preliminary determination of a risk of fraud or error based upon the comparative value of the normalized string score to

said predetermined value of normalized string scores (see at least column 2, lines 16-22).

**Claim 8:**

Kermani, as shown, discloses the following limitations:

- further including calculating the normalized string scores for a plurality of strings, summing the normalized string scores to obtain a transactional score, and dividing the transactional score by the number of strings in the sum to obtain a normalized transactional score and determining accuracy based upon the value of the normalized transactional score in comparison to a predetermined value of normalized transactional scores (see at least column 4, lines 35-38).

**Claim 10:**

Kermani, as shown, discloses the following limitations:

- a processor (see at least column 4, lines 6-17);
- a memory coupled to said processor, said memory storing keystroke fraud instructions adapted to be executed by said processor to assign a score to a keystroke  $K_m$  based upon the time independent location of the keystroke in relation to another keystroke  $K_n$ ,  $t$  without regard to an amount of time associated with entering the keystrokes to sum the scores of the keystrokes in a string entered on the keyboard to obtain a string

score and to divide the sum of the keystroke scores by the number of keystrokes in the string to obtain a normalized string score and a means for comparing said normalized string score to a predetermined score to determine the accuracy of said keystroke entries (see at least column 4, lines 6-17).

**Claim 11:**

Kermani, as shown, discloses the following limitations:

- keystroke fraud instructions are further adapted to be executed by said processor to store in said memory an indication of the absence of accuracy associated with said string based upon said normalized string score in comparison to a range of said predetermined scores (see at least column 8, lines 17-21).

**Claim 15:**

Kermani, as shown, discloses the following limitations:

- assigning a score to a keystroke  $k_m$  based upon the time independent location of the keystroke from another keystroke  $k_n$  without regard to an amount of time associated with entering the keystrokes (see at least column 5, lines 62-67);
- summing the scores of at least three of the keystrokes in the string to obtain a string score (see at least column 4, lines 35-38);

- dividing the sum of the keystroke scores by the number of keystrokes in the sum to obtain a normalized string score and comparing the same to a predetermined score to determine the probable accuracy of entered keystrokes (see at least column 4, lines 35-38 and column 2, lines 29-32).

**Claim 21:**

Kermani, as shown, discloses the following limitations:

- means for assigning a score to a keystroke  $k_m$  based upon the time independent location of the keystroke in relation to another keystroke  $k_n$  without regard to an amount of time associated with entering the keystrokes (see at least column 5, lines 62-67);
- means for summing the scores of the keystrokes in a string to obtain a string score (see at least column 4, lines 35-38);
- means for dividing the sum of the keystroke scores by the number of keystrokes in the sum to obtain a normalized string score and comparing the same to a predetermined value indicative of possible fraud or error (see at least column 4, lines 35-38 and column 2, lines 16-22).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the



invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-6, 9, 16, 17, 20, and 23 are rejected under U.S.C. 103(a) as being unpatentable over Kermani, U.S. Patent No. 6,895,514 in view of Brown, US Patent No. 5,557,686.

**Claim 4:**

Kermani discloses the limitations as shown above. Kermani does not disclose the following limitation, but Brown does:

- there is at least two intervening keystrokes between keystrokes  $[[K1]]k_1$  and  $[[KN]]k_n$  (see at least column 5, lines 28-30 and column 5, lines 57-61).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani to include the keystroke method of Brown since this allows for measuring timing between keystrokes, which ultimately aids in identifying the user.

**Claims 5, 6, 9, 16, 17:**

Kermani, discloses a keystroke score (col. 5, lines 62-67). Kermani does not disclose a whole number, linear location, and enhanced value, but Brown does:

- the score of keystroke  $k_2 \dots k_n$  is an whole number plus the least number of adjacent key spaces between keystrokes  $k_1 \dots k_{n-1}$  (see at least column 5, lines 28-38 and column 5, lines 59-61, fig. 10).
- wherein the score of keystroke K2 is based upon the linear distance between keystrokes K1 and K2 (see at least column 5, lines 28-30 and column 5, lines 59-61).
- further including adding an enhanced value to the score of a keystroke if the keystroke is shifted (see at least column 7, lines 11-17).
- the score of keystroke  $k_m$  is a whole number plus the least number of adjacent keys spaces between keystrokes  $k_m$  and  $k_n$  (see at least column 5, lines 59-61).
- the score of keystroke  $k_m$  is based upon the linear distance between keystrokes  $k_m$  and  $k_n$  (see at least column 5, lines 28-32).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani to include the keystroke method of Brown since this allows for measuring timing between keystrokes, which ultimately aids in identifying the user.

**Claim 20:**

Kermani, discloses the limitations as shown above. Kermani does not disclose the following limitation, but Brown does:

- instructions are further adapted to be executed by said processor to perform the method including adding an enhanced value to the score of keystroke  $k_m$ , if keystroke  $k_m$  is shifted (see at least column 7, lines 11-17).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani to include the keystroke method of Brown since this allows for measuring keystroke timing, which ultimately aids in identifying the user.

**Claim 23:**

Kermani discloses the limitations as shown above. Kermani does not disclose the following limitation, but Brown does:

- means for determining if a keystroke is shifted, and adding an enhanced value to the score of the keystroke if the keystroke is shifted (see at least column 7, lines 11-17).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani to include the keystroke method of Brown since this allows for measuring keystroke timing, which ultimately aids in identifying the user.

9. Claims 12-14, 18, 19, and 22 are rejected under U.S.C. 103(a) as being unpatentable over Kermani, U.S. Patent No. 6,895,514 in view of Brown, US Patent No. 5,557,686 and in further view of Kroll, U.S. Patent No. 6,405,922.

**Claim 12:**

Kermani/Brown disclose the limitations as shown above. Kermani/Brown do not disclose the following limitation, but Kroll does:

- keystroke fraud instructions are further adapted to be executed by said processor to calculate the accuracy of an online transaction entered by keystroke entries on a keyboard comprising summing the normalized string scores for a plurality of strings to obtain a transactional score, and dividing the sum of the normalized string scores by the number of strings in the sum to obtain a normalized transactional score, whereby the normalized transactional score is compared to a predetermined score to determine the accuracy of the online transaction (see at least column 4, lines 47-48)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani/Brown to include the keystroke method of Kroll since this further allows for measuring keystroke timing, which ultimately aids in identifying fraudulent users.

**Claim 13:**

Kermani/Brown disclose the limitations as shown above. Kermani/Brown do not disclose the following limitation, but Kroll does:

- keystroke fraud instructions are further adapted to be executed by said processor to store in said memory an indication of the absence of

accuracy based upon said normalized transactional score (see at least column 4, lines 47-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani/Brown to include the keystroke method of Kroll since this further allows for measuring keystroke timing, which ultimately aids in identifying fraudulent users.

**Claim 14:**

Kermani/Brown disclose the limitations as shown above. Kermani/Brown do not disclose the following limitation, but Kroll does:

- keystroke fraud instructions are further adapted to be executed by said processor to add an enhanced value to the score of certain of said keystrokes if said keystrokes are shifted (see at least column 4, lines 47-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani/Brown to include the keystroke method of Kroll since this further allows for measuring keystroke timing, which ultimately aids in identifying fraudulent users.

**Claim 18:**

Kermani/Brown disclose the limitations as shown above. Kermani/Brown do not disclose the following limitation, but Kroll does:

- instructions are further adapted to be executed by said processor to perform the method including calculating the normalized string scores for a plurality of strings, summing the normalized string scores to obtain a transactional score, and dividing the sum of the normalized string scores by the number of strings in the sum to obtain a normalized transaction score and comparing the same to a predetermined score to determine the probability of error or fraud in said keystroke entries in said online transaction (see at least column 4, lines 47-55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani/Brown to include the keystroke method of Kroll since this further allows for measuring keystroke timing, which ultimately aids in identifying fraudulent users.

**Claim 19:**

Kermani/Brown disclose the limitations as shown above. Kermani/Brown do not disclose the following limitation, but Kroll does:

- instructions are further adapted to be executed by said processor to perform the method including determining a risk of fraud or error based upon the value of the normalized transactional score in comparison to one or more predetermined scores (see at least column 4, lines 47-55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani/Brown to include the keystroke method of Kroll since

this further allows for measuring keystroke timing, which ultimately aids in identifying fraudulent users.

**Claim 22:**

Kermani/Brown disclose the limitations as shown above. Kermani further discloses the following limitation:

- means for calculating the normalized string scores for a plurality of strings (see at least column 4, lines 35-38);

Kermani/Brown disclose the limitations as shown above. Kermani/Brown do not disclose the following limitation, but Kroll does:

- means for summing the normalized string scores to obtain a transactional score (see at least column 4, lines 47-48);
- means for dividing the sum of the normalized string scores by the number of strings in the sum to obtain a normalized transactional score and comparing the same to a predetermined score indicative of possible fraud or error (see at least column 4, lines 47-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kermani/Brown to include the keystroke method of Kroll since this further allows for measuring keystroke timing, which ultimately aids in identifying fraudulent users.

***Response to Arguments***

**10.** Applicant's arguments filed September 25, 2009 have been fully considered but they are not persuasive. Applicant's arguments will be addressed in sequential order as they were set forth in the "Remarks" section on the above date. Applicant argues that Kermani does not disclose a score that is time independent. Claim 1 clearly states "assigning a score to succeeding keystrokes **after**  $k_1$ ", which clearly relates to time **after** a previous keystroke. The Examiner fails to see how a normalized keystroke sequence is compared to a predetermined value and yet as claim 1 states, "the predetermined value is not based on a previously stored keystroke sequence". "Is not based on" is vague and indefinite in and of itself, but also a comparison between the two is meaningless values if there is no relation to the normalized keystroke sequence and the predetermined value. As acknowledged in the remarks, Kermani compares an entered password to a stored (predetermined) model (value). Kermani therefore discloses comparing a normalized string score to a predetermined value. Further arguments regarding "time independent" are addressed by the 35 U.S.C. 112 rejection for lack of support in the specification.



***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas West whose telephone number is 571-270-1236. The examiner can normally be reached on Tuesday and Wednesday 7:30am - 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on 571-272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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